

Further, Applicant does not see in Johnson where an end of a cable is attached to a lower sheave, as recited in Applicant's claim 4. It appears that, in Johnson, each of the two cable ends is either connected to a counter weight (81) or the container (21) (Figure 5), not to a sheave, providing different structure and function from that in Applicant's claim 4.

Claim 4 recites in part: "...the cylindrical shaft encasing a drive motor ...". Applicant does not see in the Johnson reference a drive motor encased within the cylindrical shaft that winds the cable onto the sheaves. It appears that, in Johnson, the motor is external to the shaft.

Applicant submits that the Johnson reference does not teach each and every claim element provided in and arranged as claim 4, and therefore, the Johnson reference does not anticipate claim 4. Applicant respectfully requests allowance of claim 4.

Claims 5-6, 8, and 9 depend from claim 4, and further limit claim 4. Therefore, the Johnson reference does not teach each and every claim element provided in and arranged as claims 5-6, 8, and 9, and therefore, the Johnson reference does not anticipate claims 5-6, 8, and 9. Applicant respectfully requests allowance of claims 5-6, 8, and 9.

#### Claim 5/Claim 11

Applicant's claim 5 recites in part: "...the upper sheaves are rotatably coupled to a sheave mount, the sheave mount pivotally mounted at the top of the tower assembly to thereby respond to a change in length of either cable by pivoting to retain a balanced load on each cable." The Office action does not address this element in claim 5.

Further, Applicant does not see, in the Johnson reference, an upper sheave mount that can pivot to compensate for two cables of varying lengths. It appears that the upper cylinder shaft (37) would be mounted on each end, but it is not explicitly shown how the shaft (37) is mounted.

Further, it appears that, in the Johnson reference, there are three cables. It is not clear to Applicant as to how cables of varying lengths, such as from stretching, are compensated for in the Johnson reference. Applicant submits that the Johnson reference does not disclose the structure found in Applicant's claim 5.

Applicant's claim 11 provides similar structure as claim 5, so the discussion above would equally apply to claim 11.

#### Claim 6/Claim 12

Applicant's claim 6 recites: "...wherein at least one cable further comprises a turnbuckle adapted to allow adjustment of the length of the at least one cable." The

Office action asserts that Johnson describes "...a turnbuckle (Fig. 5)." Applicant traverses this assertion. Applicant does not see, in the Johnson reference, Figure 5, any structure resembling a turnbuckle on at least one cable. Applicant submits that the Johnson reference does not disclose the structure found in Applicant's claim 6.

Applicant's claim 12 provides similar structure as claim 6, so the discussion above would equally apply to claim 12.

#### Claim 8/Claim 14

Applicant's claim 8 recites: "...a guide bar adjacent to and parallel with the cylindrical shaft and spaced a distance from the lower sheaves, the guide bar adapted to guide the two cables onto or off of the lower sheaves in a preferred direction." The Office action asserts that Johnson describes "...a guide bar 7 (Fig. 6)." Applicant traverses this assertion.

Applicant does not see, in the Johnson reference, Figure 6, element 7, nor any structure resembling a guide bar for directing the cable onto the lower sheaves. Applicant submits that the Johnson reference does not disclose the structure found in Applicant's claim 8.

Applicant's claim 14 provides similar structure as claim 8, so the discussion above would equally apply to claim 14.

#### Claim 9/15

Independent claims 9 and 15 contain all of the limitations found in independent claims 4 and 10, respectively, and for the reasons state above for claims 4 and 10, Applicant submits that the Johnson reference does not teach the subject matter of claims 9 and 15.

Applicant submits that the Johnson reference does not teach each and every claim element arranged as in independent claim 4 and dependent claims 5, 6 and 8 and independent claim 10 and dependent claims 11, 12, and 14. Applicant respectfully requests allowance of claims 4-6, 8, 10-12 and 14.

### **Rejections Under 35 U.S.C. §103**

Claims 7 and 13

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson apparatus [‘842] in view of SOMFY’s Catalog, provided by the Applicant. Applicant respectfully traverses these grounds for rejection for the reasons argued below:

The references, when combined, must teach or suggest all the claim elements. M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

The Office action asserts that “the Johnson apparatus [‘842], contains all the structural elements as broadly as recited in the claims except having HIPRo LT50 motor. However, SOMFY’s Catalog shows a HIPRo LT50 motor and it would have been an obvious design choice to provide HIPRo LT50 motor on the Johnson apparatus [‘842] as taught by SOMFY to employ the desired motor power.” Applicant traverses this assertion citing the discussion above and the discussion as follows.

Applicant submits that Johnson shows a motor (83) that drives a chain/belt (87) that drives a shaft (41) that turns a pulley (40) that drives the cable (33). SOMFY motor is direct drive, a chain drive. Further, the SOMFY motor is contained within the shaft that turns the lower sheaves. Applicant finds no teaching or suggestion as to how a motor such as the SOMFY motor could be used with the structure disclosed in Johnson.

Applicant contends that it is not a trivial matter to replace the Johnson motor (83) with the motor as claimed in claim 7. The SOMFY motor has limit switches that controls the movement of the container from floor to floor, making floor-level limit switches unnecessary. The SOMFY motor also has a brake that holds the shaft under load, which provides a positive means to control container movement, as well as being a safety device in case of a drive motor failure, making external brakes unnecessary.

Applicant further submits that the SOMFY motor has been on the market since 1967, and, to the Applicant’s knowledge, there are no elevators/dumbwaiters that have successfully incorporated the tubular motor (SOMFY-type) as a replacement for the commonly found motors.

The fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); MPEP § 2143.01.

Applicant does not find in the Johnson reference any suggestion regarding the desirability of the benefits provided by the SOMFY motor. Additionally, the SOMFY reference does not suggest an application of the motor as applied in claims 7 and 13.

Applicant submits that the cited references do not teach or provide a suggestion that would lead an individual to combine the relevant teaching of the references as claimed in claims 7 and 13. Applicant respectfully requests allowance of claims 7 and 13.

#### Claims 4-15

Claims 4-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Rio [6,012,552] in view of SOMFY's Catalog, provided by the applicant. The Office action asserts that

"Del Rio [6,012,552] disclosed an apparatus comprising a tower assembly (Fig. 1); a platform or a container (36); an upper sheave (30); a lower sheave (31); a lifting cable (32); and a cylinder shaft (Fig. 1) driven by a motor (Col 5, lines 5-35) to wind and unwind. Del Rio [6,012,552] does not show a multiple of the upper sheaves and the lower sheaves. Accordingly, it would have been an obvious design choice to provide a plurality of upper sheaves and the lower sheaves instead of a single upper and lower sheaves on the Del Rio apparatus to provide a stronger power to the wind and unwind."

Applicant traverses this assertion.

Applicant agrees that the Del Rio reference does not show a multiple of the upper sheaves and the lower sheaves. Applicant submits that it would not be an obvious design choice to incorporate the multiple sheaves as recited in Applicant's claims 4 and 10. Applicant is unaware of any references, either cited or otherwise, that teach the same structure as that of claims 4 and 10. Applicant respectfully submits that simply stating that multiple sheaves can be used on a single (upper and lower) sheave system without some teaching as to how they would be used does not establish a *prima facie* case of obviousness. Applicant submits that impermissible hindsight was used in this rejection.

Further, Applicant submits that Del Rio describes the motor as a winch (Col 5, line 7) that winds the (single) cable. Following this teaching, a two cable lift system would therefore require two winches since there is no teaching for winding two cables on one shaft. A two winch drive system would be impractical and possibly not practicable, as synchronizing the two motors would prove very difficult.

The Office action asserts that regarding claims 7 and 13, "it would have been an obvious design choice to provide any kind of reasonable powered motor such as HIPRO LT50 motor on the Del Rio apparatus as taught by SOMFY to provide a suitable lifting power". Applicant traverses this assertion.

Applicant refers to the discussion above as to the obviousness of applying the SOMFY motor to the apparatus of Del Rio. For the same reasons, Application submits that the cited references do not teach or provide a suggestion that would lead an individual to combine the relevant teaching of the references as claimed in claims 7 and 13.

#### Claim 12

The Office action asserts that regarding claim 12, "Del Rio apparatus appears to show a turnbuckle (See Fig. 3) adapted to allow to adjust the length of the cable." Applicant traverses this assertion.

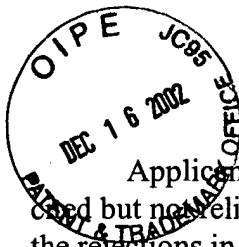
Applicant does not see, in the Del Rio reference, in Figure 3, any structure resembling a turnbuckle. Applicant submits that possibly the joint of the linking arms (41,42) that permits the platform to fold up is being mistakenly identified as a turnbuckle. There is no need for incorporation of a turnbuckle to match the length of one cable with the other, as there is only one cable in the Del Rio reference.

Applicant submits that the cited reference does not teach the structure found in claim 12.

The Office action asserts that "It is pointed out that Del Rio apparatus contains all the structural elements as broadly as recited in the claims while the intended use for dumb waiter is not patentably significant." For the reasons stated above, Applicant submits that the reference does not teach the structural elements found in Applicant's claims.

Independent claims 9 and 15 contain all of the limitations found in independent claims 4 and 10, respectively, and for the reasons state above for claims 4 and 10, Applicant submits that the Del Rio reference does not teach or suggest the subject matter of claims 9 and 15.

Applicant submits that the cited references do not teach or provide a suggestion that would lead an individual to combine the relevant teaching of the references as claimed in claims 4-15. Applicant respectfully requests allowance of claims 4-15.



**Documents Cited but Not Relied upon for this Office Action**

Applicant need not respond to the assertion of pertinence stated for the references cited but not relied upon by the Office action since these references are not made part of the rejections in this Office action. Applicant is expressly not admitting to this assertion and reserves the right to address the assertion should it form part of future rejections.

**Conclusion**

Applicant respectfully submits that claims 4-15 are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (503) 796-2767 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 500393.

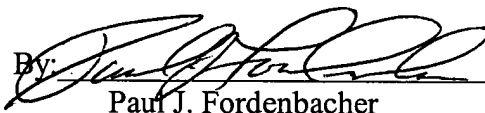
Respectfully submitted,

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